

REMARKS

Claims 1-4, 7 and 9 are pending and at issue.

Claim 1 has been amended to delete the hyphen after the word "activation" and before the "and" in line 17. Accordingly, it is believed the objection to claim 1 should be withdrawn.

Claim 1 has also been amended to delete the phrase "and that can be ventilated by the pump" in lines 2-3 and to change the phrase "the free-flowing medium" to read as "a free-flowing medium" in line 21. Accordingly, it is believed that the rejection of claims 1-4, 7 and 9 under §112 has been addressed and should be withdrawn.

The rejection of claims 1, 2, 7 and 9 as unpatentable over Garcia (EP 1 050 481) and Stone (US 4,322,020) in view of Meshberg (US 4,008,830) is respectfully traversed for the reasons described hereinafter. The rejection proposes to modify the pump of the follower piston structure of Garcia with the pump and flexible bag of Stone, and then to further modify the pump and flexible bag of Stone with the bag/container structure shown in Fig. 4 of Meshberg. However, this proposed modification is completely contrary to the express teaching and objects of Stone, as well as the principle of operation of Stone. Specifically, Stone requires that its bag 2 be fastened directly to the dip tube or inductor 4 so as to ensure that the bag 2 collapses about the dip tube 4 so that the material within the bag 2 is maintained in contact with the dip tube 4 (see column 4, lines 15-26 and Fig. 1). This is critical to achieving the express objects of Stone's invention, particularly the object of providing a sprayer for dispensing a spray

regardless of the position in which the sprayer is held and the object of providing a sprayer in which the contents are emptied almost completely. (See column 4, lines 15-26 and Fig. 1 of Stone.) The bag/container construction shown in Fig. 4 of Meshberg interferes with the construction, objects, and principle of operation disclosed in Stone because the construction of Meshberg would hold the bag away from the dip tube in the areas adjacent the upper end of the bag/container. Accordingly, the proposed modification will render Stone unsatisfactory for its intended purpose and impermissibly change the principle of operation of Stone. Such proposed modifications are expressly not allowed under the case law and the provisions of the MPEP. See MPEP 2143.01 V, which states that "the proposed modification cannot render the prior art unsatisfactory for its intended purpose" and that "if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, **then there is no suggestion or motivation to make the proposed modification**"; and MPEP §2143.01 VI stating that "the proposed modification cannot change the principle of operation of a reference" and that "if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, **then the teachings of the references are not sufficient to render the claims prima facie obvious**. (emphasis added) Accordingly, for these reasons alone, the rejection of claims 1, 2, 7 and 9 is improper and should be withdrawn.

In addition to the above, it cannot be ignored that the follower piston construction of Garcia is completely different than the flexible bag constructions of Stone and Meshberg and that Garcia's construction relies on and utilizes the rigid outer structure of the container to define the holding volume for the product without depending upon an additional structure, such as a flexible bag like those used in Stone and Meshberg to hold the product. Furthermore, contrary to the assertion and the rejection, Stone and Meshberg do not provide "a container whose interior volume reduces in conjunction with the dispensing of the product, because the containers 6 of Stone and 11 of Meshberg that are equivalent to the container 24 of Garcia do not have interior volumes that reduce in conjunction with dispensing of the product. Rather, it is the interior volume of a completely separate component (the flexible bags) that is reduced, with absolutely no equivalent in Garcia. Thus, the rejection not only requires that the structure of Stone be modified in an impermissible matter as described above, but also requires that one skilled in the art must make a first leap from a follower piston/rigid container to a flexible bag before making a second leap, as discussed above, from a flexible bag having an upper end fastened to the upper end of a dip tube to a flexible bag having an upper end molded to the upper rim of an outer container. This appears to be at least two leaps too many and for this additional reason, the rejection is improper and should be withdrawn.

Claims 3 and 4 depend from claim 1 and stand rejected as unpatentable over Garcia, Stone and Meshberg as applied to claim 1 and further in view Nomoto et al (US 6,266,943). For the reasons stated above in connection with the underlying rejection of base claim 1, the rejections of claims 3 and 4 is also improper and should be withdrawn.

In view of the foregoing, Applicants respectfully request reconsideration of the objections and rejections of the claims and allowance of the case.

Respectfully submitted,

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By

A handwritten signature in dark ink, appearing to read 'Jeffery N. Fairchild', is written over a horizontal line.

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